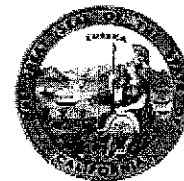


State of California—Health and Human Services Agency
Department of Health Services



California
Department of
Health Services

DIANA M. BONTÁ, R.N., Dr. P.H.
Director

May 17, 2002

GRAY DAVIS
Governor

TO: All County Welfare Directors
All County Administrative Officers
All County Medi-Cal Program Specialists/Liaisons
All County Health Executives
All County Mental Health Directors
All County Pickle Coordinators

Letter No.: 02-28

SETTLEMENT IN THE CASE OF **GERALDINE CHAMPION** vs. **COUNTY OF SAN LUIS OBISPO**; DOES 1 – 10, Inclusive, Case No. CV010357, Sup. Ct. S.L.O. County, State of California

This letter supercedes all Medi-Cal Eligibility Manual Procedures and All County Welfare Directors Letters (ACWDLs) in so far as those Procedures and Letters conflict with this ACWDL. This letter relates only to the Medi-Cal applications and maintenance of on-going Medi-Cal eligibility of individuals who are in long-term care (LTC) facilities and who are incompetent, comatose, or suffering from amnesia who do not have:

- public guardians
- conservators,
- executors, or
- spouses who are able and willing to fulfill the requirements for establishing and maintaining Medi-Cal eligibility for the individual.

The purpose of this ACWDL is to provide interpretation of the applicable statutes and regulations which will incidentally allow the settlement of the lawsuit referenced above and to provide clarification on the use of a representative (aka "authorized representative") for Medi-Cal eligibility purposes for an incompetent applicant/beneficiary.



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PLEASE NOTE: The use of the term "authorized representative" in this regard relates to eligibility for Medi-Cal both at application and to maintain on-going eligibility. The purpose of this letter is NOT to affect the requirements relating to authorized representatives for the purpose of fair hearings although both roles may be fulfilled by the same individual as long as the requirements pertaining to authorized representatives for the purpose of fair hearings are also met.

Federal Requirements

Code of Federal Regulations (CCR), Section 435.906 requires that individuals be permitted to apply for Medi-Cal without delay. Section 435.907 requires that the State "require a written application" (which would include the Statement of Facts) "from the applicant, an authorized representative, or if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant." Finally, Section 435.908 states that "the agency must allow an individual or individuals of the applicant's choice to accompany, assist, and represent the applicant in the application process or a redetermination of eligibility."

Determining Competency

Title 22, CCR, Section 50032 defines competency as "being able to act on one's own behalf in business and personal matters." The county welfare department (CWD) must determine if the LTC patient is competent to fulfill the duties required to complete the eligibility process. As previously stated in ACWDL No. 94-62, the eligibility worker (EW) may reach a competency decision by one of the following methods:

- Calling the LTC facility and inquiring as to the patient's ability to handle his or her own affairs;
- Obtaining a statement from the patient's physician;
- Making a "home visit" to the facility to communicate with the individual or staff;
- Obtaining satisfactory evidence from family members, which would provide the EW with sufficient reason to believe that the LTC individual is incapable of handling his or her affairs. Such evidence may include conservatorship documents or a written statement from a family member stating that the individual is unable to complete the application process without assistance.

It is important to note that if a physician's statement is presented to the CWD, that statement alone supersedes all other methods of determining competency.

An LTC Individual Is Determined To Be Incompetent

Once a CWD has determined that an LTC patient is unable to act on one's own behalf in business and personal matters, then the applicant's spouse would be required to complete the eligibility process. If the competent spouse simply states that he or she is unwilling to participate in the Medi-Cal eligibility processes, and has a Durable Power of Attorney for the individual, he or she may use that Durable Power of Attorney to "authorize" another party to represent the applicant/beneficiary in the Medi-Cal eligibility processes. If the applicant's spouse is also incompetent and either the spouse or individual has previously (while competent) authorized a third party to act as representative(s) for the Medi-Cal eligibility processes, then that authorization must be honored.

Please Note: While specific "authorizations" are not required for representatives of incompetent individuals in LTC for Medi-Cal eligibility processes, if a written authorization for representation of an incompetent LTC individual is presented to the CWD it can be in any written form for purposes of documenting the case record. If no written authorization is provided, the CWD shall simply document in the case record, the name and contact information of the person acting as the representative for the individual.

In circumstances where the applicant has no spouse, it must be determined if the applicant has a conservator, guardian, or executor to complete the eligibility process. If the individual does, in fact, have a conservator, guardian, or executor, then that person must complete the Statement of Facts.

If there is no conservator, guardian, or executor to complete the Statement of Facts, then the CWD shall determine if there is a need for protective services in accordance with Title 22, CCR, Section 50163. If no such need is found, then the Statement of Facts "may be completed and signed on the applicant's behalf by a relative, a person who has knowledge of the applicant's circumstances, or a representative of a public agency or the county department."

The use of the disjunctive "or" in Section 50163 establishes that there is no prioritized rank order applicable to those individuals who may sign the Statement of Facts. The regulations do not permit the CWD to impose upon an unwilling relative the duty to become involved in the Medi-Cal eligibility processes for the incompetent LTC individual who needs Medi-Cal. Neither state nor federal regulations permit CWDs to refuse to accept applications from a person who knows of the individual's need, or forms or verification from a person who has knowledge of the person's circumstances, although CWDs will determine whether specific verification is accurate.

For instance, if the incompetent individual has a relative who is not willing to complete the eligibility process, another individual with access to sufficient information and knowledge of the individual's circumstances, may complete the process. There may also be instances where a relative is not unwilling to complete the eligibility process, however another individual is willing to participate in the process and has the requested information already in his or her possession. The CWD must permit the flow of information to be provided to establish accurate eligibility by the willing representative(s) when they exist.

Knowledge Of The Individual's Circumstances

Prior personal knowledge of the incompetent individual is irrelevant. Only knowledge of the individual's current circumstances is necessary and then relevant only for the month(s) for which eligibility is being requested. The point in time when that knowledge is obtained is also irrelevant, as long as it is obtained for completion of the Statement of Facts or when requested by the CWD and within the applicable time frames.

Any person, including a representative ("authorized" or not), might need to research eligibility information. Even an applicant on his or her own behalf often must search for the necessary information because it is unremembered, is not at his or her "fingertips," and is required to be verified. The regulations do not specify that the "authorized" or other representative must personally possess such knowledge prior to the time the applicant becomes incompetent, prior to the application date, or prior to having had an appropriate opportunity to exercise due diligence in obtaining and submitting available information which is necessary to establish and maintain Medi-Cal eligibility.

Anyone who acts in the best interest of the individual by obtaining this information may be considered a person who has knowledge of the individual's need to apply and of the individual's circumstances because the application process allows for a diligent search by applicants/beneficiaries, authorized representatives, and, under the due diligence requirement, county staff to obtain information necessary to establish eligibility.

The person completing the Statement of Facts shall provide all available information required on the Statement of Facts regarding the individual's circumstances and no relevant information is to be ignored in determining eligibility. If the "authorized" representative does not have all the information necessary to make an eligibility determination, the CWD shall conduct a diligent search for the remainder. The important issue is whether the individual is eligible, and that there is a cooperative effort of the partners involved, that they are willing in that process and that there are no barriers created to accessing Medi-Cal eligibility.

When The Person Signing Is An Employee Of The "Authorized" Or Other Representative

The regulations specifically provide that the "authorized" or other representative can be an individual person or an organization. Section 50163 provides that, if the applicant/beneficiary is incompetent, either a relative or another individual who has knowledge of the individual's circumstances and has completed the Statement of Facts on the individual's behalf, or an attorney can be recognized as the individual's representative even without a written authorization.

Additionally, an employee who is working under the supervision of an attorney, nursing facility or other organization may be recognized as an "authorized" or other representative if the employee is working under the supervision of the attorney, nursing facility or organization that has the right to represent the individual or the spouse whether this "authorization" has been provided by family members in writing or is simply stated for inclusion in the case record. This means that the "authorized" or other representative has demonstrated actions which are in the best interests of the individual by obtaining the required information about the individual's circumstances to establish eligibility for submission to the CWD.

Irresponsible Representatives

If the person acting on the behalf of an incompetent LTC individual does not cooperate with the CWD, the application should not be denied. The CWD should then proceed by completing the diligent search and determining eligibility for the individual. To deny the application and start again would delay the eligibility determination and could eliminate the individual's access to one or more months of retroactive Medi-Cal benefits.

In addition, cases of elder abuse (physical and financial) need to be reported in the manner currently utilized by the county. If the "authorized" representative, representative, conservator, guardian, or person holding a Durable Power of Attorney appears to be abusing the elder individual, the county should seek to validate the information that has been provided and conduct a diligent search for the remaining information necessary to establish accurate eligibility. The county should not deny the case and begin another application.

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If you have any other questions on this issue, please contact Ms. Sharyl Shanen-Raya at (916) 657-2942.

Sincerely,

ORIGINAL SIGNED BY

Richard Brantingham
Acting Chief
Medi-Cal Eligibility Branch